

Memo

To: Criminal Justice Stakeholders

From: Christopher Dietzen, MSGC Chair

Date: August 3, 2018

Re: Request for Input – Possible Criminal History Score Policy Modifications

The Minnesota Sentencing Guidelines Commission (MSGC) is required to meet as necessary for the purposes of modifying and improving the Minnesota Sentencing Guidelines. In establishing and modifying the Sentencing Guidelines, our primary consideration must be public safety (Minn. Stat. [§ 244.09](#)).

In 2017-18, we conducted a comprehensive eight-part review of the various components of the Guidelines' criminal history score (CHS), and, within that context, we discussed the culpability and public-safety risk of repeat, violent offenders. We noted a rise in CHS from 1990 to 2013, and an even more striking fall in CHS of zero (i.e., a history of no more than one prior low-level felony conviction) over that time. In particular, we noted the growth, over time, of the custody status point. Likewise, we examined our decay policy, by which old offenses no longer contribute to criminal history.

In addition to trends presented by MSGC staff, the Robina Institute of Criminal Law and Criminal Justice presented its two-phase study of Minnesota's CHS. The study concluded that, while Minnesota's CHS predicted recidivism "moderately well," it had components that did not add to its predictive value, and that some components of Minnesota's CHS increased the presumptive sentence length without adding to the score's predictive power for recidivism. This presentation led to further discussion by the Commission as to the purpose of the CHS—is it recidivism? Does it also include retribution, deterrence and public safety? How is success or failure measured?

These review sessions and presentations led to discussions about possible modifications to CHS policy, to include proposals focused particularly on repeat, severe, violent offenders. Supporters of the proposals have argued that repeat violent offenders are more culpable, and a greater risk to public safety. Opponents have argued that current sentences are adequate and that the proposals would have a racially disproportionate affect.

This memo sets forth several of these modification ideas (with secondary matter at the end of the memo). This memo's purpose is to solicit input from various criminal justice stakeholders regarding the pros and cons of adopting one or more of these options.

With respect to each option considered, this memo first describes the option, then gives the proponents' rationale for it, then discusses the estimated impact of the option. While multiple options may be combined, the impact would depend on the specific combination of options, and has not yet been estimated. The impact of each respective option, shown below, cannot simply be added to the others.

The next MSGC meeting will take place in St. Paul on **September 13, 2018** at 1:30 p.m. If you have input, please provide it to us at that meeting. If you have a written comment for us, please submit it to MSGC staff by e-mail or U.S. mail (see addresses on the previous page) by September 5, 2018.

Introduction: The Present System of Criminal History Score Calculation

Description of Present System

There is no requirement to make changes to the system by which the Guidelines calculate CHS. In its present form, there are four components of the CHS: Juvenile Point (which, in practice, contributes to 1% of total CHS observed), Misdemeanor/Gross Misdemeanor Point (4% of CHS), Custody Status Point (21% of CHS), and Prior Felony Offenses (74% of CHS). Each component is described in more detail on page 13 (Appendix 1.1. Description).

Rationale for Continuing Present System: Making No Changes

The current CHS has been refined over years by past Commissions, all acting to further the purposes and principles of the Sentencing Guidelines. There is no pressing need to disturb the status quo. The CHS is based on principles of retribution, deterrence, and public safety, as a repeat offender is more blameworthy, was evidently undeterred by lesser sanctions, and is more likely to recidivate.

When the Guidelines were developed, the Commission recognized that offenders who reoffended while under criminal justice supervision were more culpable than offenders not under supervision. Therefore, the Commission developed the custody status point (CSP) to augment the CHS for those offenders. This retributive principle still holds: Those who reoffend while under supervision deserve a higher CHS.

With respect to the specific policy of assigning a CSP through the entire original length of stay, see page 14 (Appendix 1.2. Rationale for CSP through Original Length of Stay).

Impact of Present System

Under current policy, if the offenders who initially received executed prison sentences in 2016 all served two-thirds of their pronounced sentences, without subtracting credit for time served or factoring in early-release programs or probation violations, the resulting sentences would, excluding life sentences, require 11,159 prison beds. Table 1 (p. 15) displays the number of offenders by gender, race and judicial district, to include those with a CSP as part of their CHS, under existing policy.

Possible Modification: Change the Duration of Custody Status

Discussion Topic: Ending Custody Status upon Discharge from Probation

One idea discussed has been to revert to the pre-2001 policy of assigning a CSP only until discharge from probation. Since 2001, offenders on probation have been subject to a CSP until the end of their original length of stay. For example, under the existing policy, an offender sentenced to five years' probation would receive a CSP for any new offense committed within five years of that sentence, even if the offender received an early discharge from probation after three years.

Rationale for Ending Custody Status upon Discharge from Probation

Offenders who are discharged from probation should not continue to receive a CSP when they are no longer under custody supervision. The length of pronounced probation term varies widely across the state, even for offenses of similar severity. Some jurisdictions may favor placing offenders on probation for the full statutory maximum, but may tend to grant early discharges from probation. Ending eligibility for the CSP at discharge may reduce some of this geographical variation.

Impact of Ending Custody Status upon Discharge from Probation

It is not entirely clear how many offenders currently receive a CSP beyond the date of discharge from probation. In 2016, probation agents selected "within original probation term" as the custody status type for 222 offenders, although this figure may undercount the number of offenders who were actually receiving a CSP beyond discharge. It estimated that eliminating the CSP of those 222 offenders would result in a 22-bed reduction in the number of prison beds (a change of -0.2%). Ten offenders would shift from a prison to a probation sentence and 22 would serve less time in prison. Table 2 (p. 17) displays the prison-bed impact by gender, race & ethnicity, and judicial district if the Commission were to end eligibility for CSP for offenders on probation at the time of discharge from probation rather than at the end of the original probation term.

Possible Modification: Change How the Custody Status Point is Applied

Discussion Topic: Eliminating the CSP for All Offenders

One idea discussed has been to eliminate the CSP for all offenders.

Rationale for Eliminating the CSP

The CSP double-counts a prior offense, as the prior offense's criminal history and custody status both contribute to the CHS. While a repeat offender who commits a crime while on probation or supervised release may be considered more morally culpable than a repeat offender who commits that same crime while not on supervision, this relative difference in moral culpability does not correspond to a significant difference in their risks to reoffend. (See Appendix 12.2. Robina Recidivism Study on Minnesota's CHS, p. 33.)

Impact of Eliminating the CSP

It is estimated that this option would result in a 786-bed reduction in the number of prison beds needed (a change of -7%). Some 363 offenders would shift from a prison sentence to a probationary sentence, and 1,193 would serve less time in prison. Table 3 (p. 18) displays the prison-bed impact by gender, race & ethnicity, and judicial district if the Commission were to eliminate the CSP.

Discussion Topic: Replacing the CSP with an Aggravating Factor

In conjunction with the elimination of the CSP, an aggravating factor—that the offender was in a custody status at the time of the offense—could be added to the non-exclusive list of aggravating factors justifying departure from the presumptive Guidelines sentence. Limitations could be placed on the use of such an aggravating factor; for example, custody status could be used only to support a durational departure, and the permissible duration of the enhancement could be limited as well.

Rationale for Replacing the CSP with an Aggravating Factor

While recognizing the double-counting problem, this option also permits the recognition, on a case-by-case basis, of the separate culpability of offending while on custody status for a prior offense. This option gives discretion to the prosecutor and the court to give appropriate weight to that enhanced culpability when warranted.

Impact of Replacing the CSP with an Aggravating Factor

Compared to the option of simply eliminating the CSP (Table 3, p. 18), this option's impact would be lessened by the rate of use of the new aggravating factor, which is unknown. Under current sentencing practices, aggravated durational departures occur in fewer than five percent of prison sentences.

Discussion Topic: Limiting the CSP to ½ Point

As an alternative to the complete elimination of the CSP, another idea is to limit the CSP to 0.5 points.

Rationale for Limiting the CSP to ½ Point

This alternative would recognize the double-counting problem and the limited utility of the CSP as a risk-predicting tool, while balancing these concerns against the enhanced moral culpability of a supervised offender who commits a new offense.

Impact of Limiting the CSP to ½ Point

It is estimated that this option would result in a 450-bed reduction in the number of prison beds needed (a change of -4%). Some 206 offenders would shift from a prison sentence to a probationary sentence, and 652 would serve less time in prison. Table 4 (p. 19) displays the prison-bed impact by gender, race & ethnicity, and judicial district if the Commission were to limit eligibility for CSP to certain offenses.

Discussion Topic: Applying the CSP Only to More Severe Current Offenses

Another alternative to the complete elimination of the CSP would be to limit CSP to more severe current offenses—i.e., those ranked at severity levels (SL) 8-11 on the Standard Grid, A-C, & H on the Sex Offender Grid, D8 & D9 on the Drug Offender Grid, and attempted murder in the first degree.

Rationale for Applying the CSP Only to More Severe Current Offenses

This option recognizes the double-counting problem, discussed above, but holds that offenders willing to commit the most serious offenses while on supervision are worthy of the additional prison time. For offenders below the dispositional line—i.e., whose current offense is not serious enough to warrant a prison commitment at a CHS of zero—the mere fact of custody status should not be sufficient to push them into prison.

Impact of Applying the CSP Only to More Severe Current Offenses

It is estimated that this option would result in a 169-bed reduction in the number of prison beds needed (a change of -5.3%). Some 363 offenders would shift from a prison sentence to a probationary sentence, and 856 would serve less time in prison. Table 5 (p. 20) displays the prison-bed impact by gender, race & ethnicity, and judicial district if the Commission were to limit eligibility for CSP to certain offenses.

Discussion Topic: Limiting the CSP to ½ Point for Less Severe Current Offenses

An alternative—standing between the complete elimination of the CSP on one hand, and applying the CSP only to more severe current offenses on the other—would be to limit the CSP to 0.5 points for current offense ranked at SL 1-7. The CSP would remain at 1 point for more severe offenses.

Rationale for Limiting the CSP to ½ Point for Less Severe Current Offenses

This option represents a hybrid between the options, detailed above, of limiting the CSP to ½ point for all offenses, and of applying the CSP only to more severe current offenses.

Impact of Limiting the CSP to ½ Point for Less Severe Current Offenses

The impact of limiting the CSP to ½ point for less severe current offenses is estimated in Table 6 (p. 21).

Discussion Topic: Limiting CSP from Low-Severity Prior Offenses to ½ Point

Within the area of changing how the CSP is applied, a final idea under consideration is to limit weight of a CSP to 0.5 points for offenders whose custody status derives from a prior offense that had a weight of less than 1.0 point, was a misdemeanor or gross misdemeanor, or was a statutory stay of adjudication for a drug offense under Minn. Stat. § 152.18.

Rationale for Limiting CSP from Low-Severity Prior Offenses to ½ Point

Currently, offenders receive one CSP no matter how serious the prior offense was (with some exceptions for offenses on the Sex Offender Grid). The CSP therefore can contribute more to the CHS than the weight for the prior offense (0.5 points if a SL 1 or 2 offense, or 1 unit¹ if a gross misdemeanor or targeted misdemeanor). An offender's custody status with respect to a prior offense should not contribute more to criminal history than the actual commission of that offense.

Impact of Limiting CSP from Low-Severity Prior Offenses to ½ Point

It is estimated that this option would result in a 207-bed reduction in the number of prison beds needed (a change of -1.9%). Some 107 offenders would shift from a prison sentence to a probationary sentence, and 256 would serve less time in prison. Table 7 (p. 22) displays the prison-bed impact by gender, race & ethnicity, and judicial district if the Commission were to limit eligibility for CSP to certain offenses.²

¹ Four or more misdemeanor/gross misdemeanor units equal one criminal history point, with some exceptions if the current offense is a DWI or criminal vehicular operation offense.

² MSGC staff conducted a special research project in which the prior offense for which the custody status point was derived was determined. In cases in which offenders had more than one eligible prior, MSGC staff used its

Possible Modification: Increase Sentences for Repeat Violent Offenders

Discussion Topic: Increasing CHS for Repeat Severe Violent Offenders (All Priors)

The following idea has been proposed: to increase the CHS weight assigned to prior offenses defined as severe violent crimes (SVCs) if the current offense is also a SVC. Each prior SVC would receive a weight of 3 points, instead of 1.5 or 2 points. Figure 1 displays the offenses that would be designated as SVCs, their current statutory maximums, SL rankings, and whether they are included in the definition of violent crime in Minn. Stat. § 609.1095.

Figure 1. Proposed List of Severe Violent Crimes

Minn. Stat. §	Offense Description	Stat. Max.	SL	Attempts Included	Included in Minn. Stat. § 609.1095
609.185	Murder 1	Life/20 yrs.	Off-Grid	Yes	Yes
609.2661	Murder 1 - Unborn Child	Life/20 yrs.	Off-Grid	Yes	Yes
609.19, subd. 1	Murder 2 - Intentional/drive-by shooting	40 years	11	Yes	Yes
609.19, subd. 2	Murder 2 - Unintentional	40 years	10	Yes	Yes
609.2662	Murder 2 - Unborn Child	40 years	10 or 11	Yes	Yes
609.195(a)	Murder 3 - eminently dangerous act and evincing depraved mind	25 years	10	No	Yes
609.2663	Murder 3 - Unborn Child	25 years	10	No	Yes
609.221	Assault 1 - great bodily harm/peace officer	20 years	9	No	Yes
609.222, subd. 2	Assault 2 - dangerous weapon and substantial bodily harm	10 years	6	No	Yes
609.245, subd. 1	Aggravated Robbery 1 - weapon/fake weapon/bodily harm	20 years	8	No	Yes
609.25, subd. 2(2)	Kidnapping - unsafe release	40 years	8	No	Yes
609.25, subd. 2(2)	Kidnapping - unsafe release/under 16	40 years	8	No	Yes
609.25, subd. 2(2)	Kidnapping - great bodily harm	40 years	9	No	Yes
609.282	Labor Trafficking	20/15 yrs.	Unranked	No	Yes
609.342, subd. 1(c), (d), (e), (f)	Criminal Sexual Conduct 1 (force, weapon, injury, accomplice)	30 years	A	No	Yes
609.343, subd. 1(c), (d), (e), (f)	Criminal Sexual Conduct 2 (force, weapon, injury, accomplice)	25 years	B	No	Yes
609.498, subd. 1b	Aggravated Witness Tampering 1	20 years	9	No	Yes
609.561, subd. 1, 2	Arson 1	20 years	8	No	Yes
609.66, subd. 1e(b)	Drive-By Shooting - at person, occupied building/motor vehicle	10 years	8	No	Yes

best discretion to determine which offense was the custody status point offense. See “Notes on Estimating Impact” on p. 21.

Rationale

The SVC offenses are contrary to public safety, and those who have repeatedly committed them demonstrate an enhanced risk to jeopardize public safety. Increased prison durations will mitigate that risk. Moreover, those who repeatedly commit these severe, violent offenses are more blameworthy.

Impact

The total estimated impact is an eventual need for 52 beds over time. For twenty-six offenders, application of the proposed increase in weights for prior offenses would not result in a longer prison sentence (10 because they received consecutive sentences and 16 with criminal history scores of six or more). Table 8 (p. 23) displays the number of offenders whose sentence would change and the projected prison-bed impact. Table 9 (p. 24) displays the impact by gender, race & ethnicity, and judicial district.

Discussion Topic: Variations of the Proposal to Increase CHS for Repeat Severe Violent Offenders

The following are variations of the proposal to increase CHS for repeat severe violent offenders:

- **Increase Sentences for Repeat Violators of High-Severity Offenses in General (SL 8-11), Rather Than Listed SVC Offenses**

Rather than governing repeat offenses on the SVC list, a variation would be for the proposal to govern repeat high-severity offenses in general (i.e., those offenses ranked at a SL of 8 and above on the Standard Grid and Attempted First Degree Murder). If the current offense is one of these high-severity offenses, any prior SL 8 offense would be worth 2 points, and any prior SL 9-11 offense would be worth 3 points.

Rationale: This variation would be more in keeping with the proportionality principle that underlies the Sentencing Guidelines, under which offenses at higher SL are considered more serious—as reflected by presumptive durations and criminal history point weights—than offenses at lower SLs. This variation would make all SL 8-11 offenses eligible for enhancement because the Commission has already determined that such offenses are the most serious. Similarly, the increase in criminal history points is greater for prior SL 9-11 offenses (a one-point increase, from 2 points to 3) than prior SL 8 offenses (a half-point increase, from 1½ points to 2) because the Commission has already determined that more criminal history points should be attributable to SL 9-11 offenses. SL 6 offenses are not included within this variation because the Commission does not rank these among the most serious offenses.

First-degree aggravated robbery is the crime most impacted by proposals to increase sentences for repeat violent offenders. As a result, the increase in prison beds needed under such

proposals will be filled disproportionately by black males. This variation—wherein the weight of a prior first-degree aggravated robbery conviction (a SL 8 offense) rises from 1½ points to 2 points, rather than 3—would lessen this disproportionate impact. As serious as first-degree aggravated robberies are, they remain less serious, under the Guidelines structure, than SL 9-11 offenses. A SL 8 offense should not be treated as serious as a SL 9-11 offense when the consequence of doing so has a disproportionate impact on black males.

- **Count Only “Previous” Offenses, Rather Than All Priors**

Under the proposal to increase CHS for repeat severe violent offenders, any SVC sentenced before the sentence for the current SVC will count as a prior, even if the offender committed the two SVCs at or near the same time as each other. A variation would be that a prior SVC counts only if the first offense is “previous”³ to the second offense; i.e., the offender must have been convicted and sentenced for an offense before committing the present offense.

Rationale: The justification for the SVC proposal is weaker when the prior SVC was committed at the same time as, or part of a crime spree with, the current SVC. This variation would strengthen the justification for the SVC proposal.

- **Enhance Sentence Durations, Rather Than Criminal History Scores**

The SVC proposal would increase the CHS for repeat SVC offenders. A variation would be to increase the actual sentence durations by an amount that varies by the SL of the current offense (e.g., a 6-mo. increase if the current offense is SL 6; a 12-mo. increase if the current offense is SL 8; an 18-mo. increase if the current offense is SL 9; and a 24-mo. increase if the current offense is SL 10 or above).

(If this variation were adopted, the Commission would need to decide whether or not the enhancements would apply to the durations of consecutive sentences.)

Rationale: A number of repeat SVC offenders have the maximum CHS of 6, and will therefore not be impacted by a policy that would increase their CHS. This variation would include those high-CHS offenders within the impact of a repeat severe violent offender policy change.

Impact

Figure 2 illustrates the impact of the repeat severe violent offender proposal and its variations, as described above.

³ For purposes of this document, “previous” is used in the same sense as Minn. Stat. § 609.3455, subd. 1(f): “A conviction is considered a ‘previous sex offense conviction’ if the offender was convicted and sentenced for a sex offense before the commission of the present offense.”

Figure 2. Comparative Impact of Repeat Severe Violent Offender Proposal and Variations

<i>Repeat offenses Involved:</i>	Offenses on the SVC List				SL 8-11 Offenses			
<i>Priors Counted:</i>	All Priors		Only “Previous”*		All Priors		Only “Previous”*	
<i>Sentence Enhancement:</i>	CHS	Sentence Durations	CHS	Sentence Durations	CHS	Sentence Durations	CHS	Sentence Durations
No. of repeat offenders (prison only)	73	73	43	43	85	85	46	46
% of repeat offenders whose sentences increase	64	81	61	86	54	84	52	89
Increase in est. prison beds	52	47	30	28	29	56	14	32
Avg. length of sentence (months)	19.8	14	21	13.7	11	14	11	14

* For purposes of this document, “previous” is used in the same sense as Minn. Stat. § 609.3455, subd. 1(f); i.e., the offender must have been convicted and sentenced for an offense before committing the present offense.

Possible Modification: Change Decay Policy

Discussion Topic: Start Decay Period upon Sentence to Probation

One idea under discussion is that the 15-year period of decay would start at the date of sentence, for offenders placed on probation. (For offenders who receive prison sentences, decay would continue to start at the date of discharge.)

Rationale

Under the current policy, offenders placed on probation may actually wait longer for their prior offense to decay than offenders who go to prison. This is because the decay period of 15 years starts at discharge from the prior offense. For an offender placed on probation for five years, decay would not start until five years after sentencing; by contrast, decay would start two years from sentencing for an offender who received a 24-month prison sentence.

Because pronounced probation terms vary widely across the state for offenses of similar severity, the length of time an offender must wait for a prior offense to decay can also vary widely.

Impact

In a sample of 2,657 prior offenses, it was determined that 191 (7%) of prior probation offenses would have decayed.⁴ Fifteen offenders (1.1% of the sample) would shift from prison to probation and 34 offenders (2.6% of the sample) would serve less time. Since the sample is 35 percent of offenders sentenced to prison who had at least one prior felony offense, it is estimated that the 35-prison bed reduction would translate into a reduction of 100 prison beds for the population of offenders sentenced to prison in 2016. Table 10 (p. 26) displays the estimated prison-bed impact by gender, race & ethnicity, and judicial district if the Commission were to start the decay period upon sentence for probationers.⁵

Discussion Topic: Reduce Decay Period

A related, and possibly complementary, idea is to change the decay period for prior felonies to 10 years, and 5 years for misdemeanors and gross misdemeanors.

Rationale

The change in decay policy may lessen the impact of criminal history, thereby focusing punishment on the current offense. The change in decay policy can also incentivize a crime-free existence. Half of all priors are five years old or less: An MSGC staff review of the age of prior felony offenses in 2015 found that 50 percent were five years old or less; another 25 percent were ten years old or less; and the remaining 25 percent were over ten years old.

Impact

Twelve percent of the prior felony convictions from offenders sentenced in 2016 would have decayed if the felony decay period was changed. It is estimated that this option would result in a 391-bed reduction in the number of prison beds needed (a change of -3.5%). Some 200 offenders would shift from a prison sentence to a probationary sentence, and 253 would serve less time in prison. Table 11 (p. 28) displays the prison-bed impact by gender, race & ethnicity, and judicial district if the Commission were to change the decay period for felonies.

⁴ This translates into 3% of all prior offenses.

⁵ MSGC staff conducted a special research project to determine the type of sentence (prison or probation) that offenders received for each prior offense. To do this, staff randomly sampled 35 percent of offenders sentenced to prison in 2016 who had at least one prior felony offense listed on the worksheet. The 1,332 offenders in the sample had 6,043 prior felony offenses; 45 percent had received prison; 44 percent had received probation; and 11 percent had an unknown disposition (primarily because it was from a jurisdiction other than Minnesota). See “Notes on Estimating Impact” on p. 25.

Possible Modification: Change the Misdemeanor Point

Discussion Topic: Eliminating the Misdemeanor Point

One idea discussed has been to eliminate, for all offenders, the criminal history point(s) that results from a sufficient number of prior gross misdemeanors and targeted misdemeanors.

Rationale for Eliminating the Misdemeanor Point

The Commission refined the list of past offenses that contribute to a misdemeanor point in 1989, and again in 2010. In light of the fact that all of the qualifying misdemeanors,⁶ and many of the gross misdemeanors that most directly implicate public safety, are themselves now enhanced to felonies when committed repeatedly, the continued need for the misdemeanor point is less obvious.

This is particularly so in light of the misdemeanor point's limited value in predicting recidivism (see Appendix 12.2. Robina Recidivism Study on Minnesota's CHS, p. 33), and the unique challenges practitioners face in administering the misdemeanor point. To the extent that the point's complexity makes the accurate calculation of an offender's CHS more difficult, the misdemeanor point may be said to work against the Guidelines principle of predictability.⁷

Impact of Eliminating the CSP

It is estimated that this option would result in a 165-bed reduction in the number of prison beds needed (a change of -1.5%). Some 96 offenders would shift from a prison sentence to a probationary sentence, and 183 would serve less time in prison. Table 12 (p. 30) displays the prison-bed impact by gender, race & ethnicity, and judicial district if the Commission were to eliminate the misdemeanor point.

⁶ Minn. Sentencing Guidelines §§ 2.B.3.a.(1), 6; Minn. Stat. § 299C.10, subd. 1(e) ("targeted misdemeanor" list).

⁷ See Minn. Stat. § 244.09, subd. 5.

Appendixes

These appendixes contain supporting documentation for the various options being considered.

Appendix 1. The Present System of Criminal History Score Calculation

Appendix 1.1. Description

There are presently four components to the CHS, as described in Guidelines section 2.B:

- Juvenile Point (1% of CHS): Offenders can receive one or two points for juvenile felony level offenses committed after the age of 16. Two juvenile offenses equal one point. Two points are possible, but only if there are four or more juvenile offenses, of which two are serious felonies. No juvenile points are assigned if the offender was age 25 or older on the date of the current offense.
- Misdemeanor/Gross Misdemeanor Point (4% of CHS): Generally, offenders can receive only one point for four prior gross misdemeanor or targeted misdemeanor⁸ offenses that were not used to enhance the current offense to a felony. If the current offense is a DWI or criminal vehicular operation, the contribution of prior DWI and criminal vehicular operation misdemeanors and gross misdemeanors is doubled, and there is no limit to the number of points. Prior misdemeanors and gross misdemeanors decay ten years after discharge from sentence.
- Custody Status Point (21% of CHS): One point is assigned if, on the date of the current offense, the offender was on probation, parole, supervised/conditional release, confined, or on escape status, following conviction for a felony, gross misdemeanor, or targeted misdemeanor, or for a prior stay of adjudication under Minn. Stat. § 152.18. Unless the current offense is on the sex offender grid, one point is assigned regardless of the type of status or seriousness of the prior offense. The point remains in effect until the date of discharge from sentence or the end of the originally pronounced period of probation.
- Prior Felony Offenses (74% of CHS): Prior felonies are assigned a weight, in half-point increments, ranging from 0.5 to 2.0 points depending on the seriousness of the offense.⁹ Points decay fifteen years after discharge from sentence.

⁸ “[A] a targeted misdemeanor is a misdemeanor violation of [Minn. Stat. §] 169A.20 (driving while impaired), 518B.01 (order for protection violation), 609.224 (fifth-degree assault), 609.2242 (domestic assault), 609.746 (interference with privacy), 609.748 (harassment or restraining order violation), 617.23 (indecent exposure), or 629.75 (domestic abuse no contact order).” Minn. Stat. § 299C.10, subd. 1(e).

⁹ First-degree criminal sexual conduct offenses can receive a weight of 3 if the offender is a repeat sex offender.

Appendix 1.2. Rationale for CSP through Original Length of Stay

With respect to the 2001 policy of extending the CSP to the duration of the originally pronounced probation term, the Commission adopted this policy after hearing that courts in some jurisdictions were reluctant to grant early discharges from probation because early discharge would also terminate the offender's exposure to the CSP.¹⁰

¹⁰ Minn. Sentencing Guidelines Commission. (2000, Feb. 17). *Minnesota Sentencing Guidelines Commission Meeting Minutes*. St. Paul, MN.

Appendix 1.3. Impact of Present System

Table 1 displays the number of offenders by gender, race and judicial district¹¹ under existing policy, including those with a custody status point (CSP) as part of their criminal history score (CHS). Also shown is the 2016 imprisonment rate and the resulting number of estimated prison beds needed (not equivalent to the Department of Corrections prison population¹²) per 100,000 population¹³ for the existing CHS policy.

Table 1. Estimated Impact of Current Policy, by Gender, Race and Judicial District

		Number of Offenders	With CSP	Presumptive Commit	Prison		Est. Prison Beds		Est. Prison Beds per 100,000
					Number	Percent	Number	Percent	
Race & Ethnicity	Male	13,702	46%	37%	3,894	28%	10,355	93%	471
	Female	3,225	38.5%	18%	414	13%	804	7%	36
	White	9,813	43%	29%	2,193	22%	5,241	47%	139
	Black	4,209	47%	44%	1,315	31%	3,839	34%	1,456
	American Indian	1,472	52%	29%	394	27%	877	8%	1,267
	Hispanic	903	41%	39%	285	32%	928	8%	480
	Asian	525	39%	28%	121	23%	274	3%	123
	Other/unknown	5	20%	20%	0	0%	0	0%	---

¹¹ See Appendix 12.1. Minnesota Judicial District Map.

¹² Throughout, “estimated prison beds” means two-thirds of the sum of the durations, in years, of executed prison sentences imposed annually. This estimate does not account for pre- or post-sentencing events that may cause an offender to serve more or less time than two-thirds of the pronounced, executed prison sentence, such as participation in an early-release program, jail credit, probation violation, or supervised release violation.

¹³ Throughout, rates are per 100,000 residents of Minnesota (or the appropriate subset) age 15 and older as of July 1, 2016, as estimated by the U.S. Census Bureau. Members of more than one race may contribute to more than one residential population group when grouped by race.

		Number of Offenders	With CSP	Presumptive Commit	Prison		Est. Prison Beds		Est. Prison Beds per 100,000
					Number	Percent	Number	Percent	
Judicial District	First	2,192	43.5%	27%	442	20%	1,045	9%	168
	Second	1,784	50%	39%	512	29%	1,279	12%	295
	Third	1,344	46%	31.5%	331	25%	890	8%	232
	Fourth	3,341	42%	41%	970	29%	2,740	25%	273
	Fifth	1,075	39%	30%	234	22%	563	5%	241
	Sixth	862	39%	31%	187	22%	549	5%	260
	Seventh	1,689	48.5%	33%	494	29%	1,170	11%	299
	Eighth	432	37%	28%	129	30%	360	3%	278
	Ninth	1,688	49%	29%	434	26%	1,101	10%	401
	Tenth	2,520	45%	30%	575	23%	1,462	13%	191
	Total	16,927	44.5%	33%	4,308	25.5%	11,159	100%	251

Appendix 2. End Custody Status upon Discharge from Probation

Table 2. Estimated Impact of Ending CSP at Discharge from Probation, by Gender, Race and Judicial District

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	0.1%	28%	10	0.1%	12	26	0.2%	10	21	10,334	-0.2%	470
	Female	0.0%	13%	0	0.0%	0	4	0.1%	1	1	803	-0.1%	36
Race & Ethnicity	White	0.1%	22%	5	0.1%	5	21	0.2%	9	14	5,227	-0.3%	139
	Black	0.1%	31%	1	0.0%	1	5	0.1%	1	2	3,837	-0.1%	1,455
	American Indian	0.2%	27%	3	0.2%	4	2	0.1%	0.5	4.5	873	-0.5%	1,261
	Hispanic	0.2%	32%	1	0.1%	1.3	1	0.1%	0.2	1.5	927	-0.2%	479
	Asian	0.0%	23%	0	0.0%	0	1	0.2%	0.5	0.5	274	-0.2%	123
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
	First	0.2%	20%	3	0.1%	3.4	1	0.0%	0.2	3.6	1,041	-0.3%	168
	Second	0.2%	29%	2	0.1%	3	4	0.2%	1	4	1,275	-0.3%	294
Judicial District	Third	0.1%	25%	0	0.0%	0	1	0.1%	0.3	0.3	890	0.0%	232
	Fourth	0.1%	29%	1	0.0%	0.8	4	0.1%	1.2	2	2,738	-0.1%	273
	Fifth	0.0%	22%	0	0.0%	0	2	0.2%	0.5	0.5	563	-0.1%	241
	Sixth	0.1%	22%	0	0.0%	0	1	0.1%	0.1	0.1	549	0.0%	260
	Seventh	0.1%	29%	1	0.1%	1	4	0.2%	1	2	1,168	-0.2%	299
	Eighth	0.0%	30%	0	0.0%	0	1	0.2%	0.1	0.1	360	0.0%	278
	Ninth	0.1%	26%	1	0.1%	1	3	0.2%	3	4	1,097	-0.4%	400
	Tenth	0.1%	23%	2	0.1%	2.4	9	0.4%	2.3	4.6	1,457	-0.3%	190
	Total	0.1%	25.5%	10	0.1%	12	30	0.2%	10	22	11,137	-0.2%	250

Appendix 3. Eliminating the CSP for All Offenders

Table 3. Estimated Impact of Eliminating the CSP, by Gender, Race and Judicial District

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	4.0%	26%	334	2.4%	395	1,068	7.8%	327	722	9,633	-7.0%	438
	Female	2.0%	12%	29	0.9%	33	125	3.9%	31	64	740	-8.0%	33
Race & Ethnicity	White	3.1%	20.5%	183	1.9%	219	602	6.1%	170	389	4,852	-7.4%	129
	Black	4.6%	29%	112	2.7%	123	358	8.5%	122	245	3,594	-6.4%	1,363
	American Indian	4.0%	24%	35	2.4%	41	121	8.2%	32	73	804	-8.3%	1,161
	Hispanic	3.4%	29%	22	2.4%	33	78	8.6%	26	59	869	-6.4%	449
	Asian	3.0%	21%	11	2.1%	12	34	6.5%	9	20	254	-7.3%	114
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	3.7%	18%	42	1.9%	51	114	5.2%	27	78	967	-7.5%	156
	Second	5.2%	25%	64	3.6%	73	136	7.6%	38	111	1,168	-8.7%	269
	Third	3.0%	23%	24	1.8%	28	107	8.0%	32	59	831	-6.6%	216
	Fourth	3.0%	27%	59	1.8%	60	224	6.7%	80	141	2,599	-5.1%	259
	Fifth	2.5%	21%	13	1.2%	17	70	6.5%	20	37	526	-6.6%	226
	Sixth	4.1%	20.5%	10	1.2%	11	50	5.8%	20	31	518	-5.6%	246
	Seventh	4.0%	26%	52	3.1%	72	159	9.4%	44	116	1,054	-9.9%	270
	Eighth	3.2%	28%	9	2.1%	11	33	7.6%	12	23	337	-6.4%	260
	Ninth	3.3%	24%	35	2.1%	43	130	7.7%	39	83	1,018	-7.5%	371
	Tenth	3.9%	21%	55	2.2%	62	170	6.7%	45	108	1,354	-7.4%	177
	Total	3.6%	23%	363	2.1%	428	1,193	7.0%	358	786	10,373	-7.0%	233

Appendix 4. Limiting the CSP to ½ Point

Table 4: Estimated Impact of Limiting the CSP to ½ Point, by Gender, Race and Judicial District

		Shift to Presump- tive Stay	New Prison Rate	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	2.3%	27%	189	1.4%	226	579	4.2%	185	411	9,944	-4.0%	452
	Female	1.2%	12.3%	17	0.5%	19	73	2.3%	20	39	765	-4.9%	34
Race & Ethnicity	White	1.9%	21.4%	97	1.0%	114	334	3.4%	101	215	5,026	-4.1%	134
	Black	2.7%	29.6%	68	1.6%	77	198	4.7%	69	145	3,694	-3.8%	1,401
	American Indian	2.4%	25.1%	25	1.7%	30	67	4.6%	19	49	828	-5.6%	1,196
	Hispanic	1.7%	30.5%	10	1.1%	18	34	3.8%	11	29	899	-3.1%	465
	Asian	2.1%	21.9%	6	1.1%	7	19	3.6%	5	11	263	-4.0%	118
	Other/ unknown	0.0%	0.0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	2.6%	18.8%	29	1.3%	36	61	2.8%	15	52	993	-5.0%	160
	Second	3.0%	26.7%	36	2.0%	42	74	4.1%	22	64	1,215	-5.0%	280
	Third	1.9%	23.7%	12	0.9%	15	54	4.0%	16	32	858	-3.6%	223
	Fourth	1.8%	28.0%	35	1.0%	38	128	3.8%	44	81	2,659	-3.0%	265
	Fifth	1.4%	21.2%	6	0.6%	7	33	3.1%	9	16	547	-2.8%	235
	Sixth	2.2%	21.0%	6	0.7%	7	23	2.7%	13	19	530	-3.5%	251
	Seventh	2.1%	27.6%	28	1.7%	38	85	5.0%	23	62	1,108	-5.3%	283
	Eighth	2.1%	28.7%	5	1.2%	6	19	4.4%	8	14	346	-3.9%	267
	Ninth	2.0%	24.5%	20	1.2%	23	78	4.6%	24	47	1,054	-4.3%	384
	Tenth	2.0%	21.7%	29	1.2%	34	97	3.8%	30	64	1,398	-4.4%	182
	Total	2.1%	24.2%	206	1.2%	245	652	3.9%	205	450	10,709	-4.0%	241

Appendix 5. Applying the CSP Only to More Severe Current Offenses

Table 5. Estimated Impact of Limiting CSP to Certain SLs, by Gender, Race and Judicial District

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	4.0%	26%	334	2.4%	395	758	5.5%	152	547	9,808	-5.3%	446
	Female	2.0%	12%	29	0.9%	33	98	3.0%	17	50	754	-6.2%	34
Race & Ethnicity	White	3.1%	20.5%	183	1.9%	219	455	4.6%	92	312	4,929	-6.0%	131
	Black	4.6%	29%	112	2.7%	123	237	5.6%	47	170	3,669	-4.4%	1,392
	American Indian	4.0%	24%	35	2.4%	41	95	6.5%	17	58	819	-6.6%	1,183
	Hispanic	3.4%	29%	22	2.4%	33	48	5.3%	10	43	885	-4.6%	458
	Asian	3.0%	21%	11	2.1%	12	21	4.0%	3	14	260	-5.1%	117
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%	0	0	0	----	---
Judicial District	First	3.7%	18%	42	1.9%	51	89	4.1%	17	67	978	-6.4%	157
	Second	5.2%	25%	64	3.6%	73	97	5.4%	18	90	1,189	-7.0%	274
	Third	3.0%	23%	24	1.8%	28	78	5.8%	17	45	845	-5.1%	220
	Fourth	3.0%	27%	59	1.8%	60	136	4.1%	27	87	2,653	-3.2%	265
	Fifth	2.5%	21%	13	1.2%	17	52	4.8%	11	28	535	-5.0%	229
	Sixth	4.1%	20.5%	10	1.2%	11	32	3.7%	6	16	533	-2.9%	253
	Seventh	4.0%	26%	52	3.1%	72	116	6.9%	22	95	1,075	-8.1%	275
	Eighth	3.2%	28%	9	2.1%	11	22	5.1%	6	17	343	-4.7%	265
	Ninth	3.3%	24%	35	2.1%	43	96	5.7%	18	62	1,039	-5.6%	379
	Tenth	3.9%	21%	55	2.2%	62	138	5.5%	27	89	1,373	-6.1%	179
	Total	3.6%	23%	363	2.1%	428	856	5.1%	169	597	10,562	-5.3%	238

Appendix 6. Limiting the CSP to ½ Point for Less Severe Current Offenses

Table 6. Estimated Impact of Limiting CSP to ½ Point for Less Severe Current Offenses, by Gender, Race and Judicial District

		Shift to Presump- tive Stay	New Prison Rate	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	2.3%	27%	189	1.4%	226	416	3.0%	86	312	10,043	-3.0%	457
	Female	1.2%	12.3%	17	0.5%	19	57	1.8%	10	29	775	-3.6%	34
Race & Ethnicity	White	1.9%	21.4%	97	1.0%	114	252	2.6%	53	168	5,073	-3.2%	135
	Black	2.7%	29.6%	68	1.6%	77	134	3.2%	27	104	3,735	-2.7%	1,417
	American Indian	2.4%	25.1%	25	1.7%	30	51	3.5%	9	39	838	-4.4%	1,211
	Hispanic	1.7%	30.5%	10	1.1%	18	24	2.7%	5	23	904	-2.6%	467
	Asian	2.1%	21.9%	6	1.1%	7	12	2.3%	1	8	266	-2.9%	120
	Other/ unknown	0.0%	0.0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	2.6%	18.8%	29	1.3%	36	48	2.2%	9	45	1,000	-4.3%	161
	Second	3.0%	26.7%	36	2.0%	42	52	2.9%	9	51	1,228	-4.0%	283
	Third	1.9%	23.7%	12	0.9%	15	40	3.0%	10	25	865	-2.8%	225
	Fourth	1.8%	28.0%	35	1.0%	38	85	2.5%	18	56	2,684	-2.0%	268
	Fifth	1.4%	21.2%	6	0.6%	7	23	2.1%	5	11	552	-2.0%	237
	Sixth	2.2%	21.0%	6	0.7%	7	13	1.5%	2	9	540	-1.6%	256
	Seventh	2.1%	27.6%	28	1.7%	38	63	3.7%	12	50	1,120	-4.3%	287
	Eighth	2.1%	28.7%	5	1.2%	6	12	2.8%	4	10	350	-2.8%	270
	Ninth	2.0%	24.5%	20	1.2%	23	60	3.6%	10	33	1,068	-3.0%	389
	Tenth	2.0%	21.7%	29	1.2%	34	77	3.1%	16	50	1,412	-3.4%	184
	Total	2.1%	24.2%	206	1.2%	245	473	2.8%	96	341	10,818	-3.1%	243

Appendix 7. Limiting CSP from Low-Severity Prior Offenses to ½ Point

Table 7. Estimated Impact of Limiting CSP from Low-Severity Prior Offenses to ½ Point, by Gender, Race and Judicial District

		Shift to Presumptive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	0.5%	28%	95	0.7%	107	215	1.6%	75	182	10,173	-1.8%	463
	Female	0.3%	12.5%	12	0.4%	15	41	1.3%	9	24	780	-3.0%	35
Race & Ethnicity	White	0.5%	22%	66	0.7%	77	142	1.4%	41	118	5,123	-2.3%	136
	Black	0.5%	31%	28	0.7%	31	68	1.6%	30	61	3,778	-1.6%	1,433
	American Indian	0.4%	26%	8	0.5%	9	26	1.8%	7	16	861	-1.8%	1,244
	Hispanic	0.2%	31%	3	0.3%	3	12	1.3%	4	7	921	-0.8%	476
	Asian	0.4%	23%	2	0.4%	2	8	1.5%	2	4	270	-1.5%	122
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	0.5%	19%	18	0.8%	20	30	1.4%	6	26	1,019	-2.5%	164
	Second	0.5%	28%	12	0.7%	14	28	1.6%	8	22	1,257	-1.7%	290
	Third	0.6%	24%	8	0.6%	8	19	1.4%	7	15	875	-1.7%	228
	Fourth	0.6%	28%	21	0.6%	19	38	1.1%	14	33	2,707	-1.2%	270
	Fifth	0.3%	21.5%	3	0.3%	5	5	0.5%	1	6	557	-1.1%	239
	Sixth	0.3%	21%	4	0.5%	4	6	0.7%	3	7	542	-1.3%	257
	Seventh	0.5%	28%	15	0.9%	23	38	2.2%	11	34	1,136	-2.9%	291
	Eighth	0.5%	29%	2	0.5%	3	2	0.5%	1	4	356	-1.1%	275
	Ninth	0.5%	25%	13	0.8%	16	37	2.2%	9	25	1,076	-2.3%	392
	Tenth	0.4%	22%	11	0.4%	12	53	2.1%	25	37	1,425	-2.5%	186
	Total	0.5%	25%	107	0.6%	123	256	1.5%	84	207	10,952	-1.9%	246

Notes on Estimating Impact: Measuring the impact of this option required the determination of which prior conviction the CSP was based upon. For a limited attempt to measure this impact, MSGC staff attempted to determine what offense the custody status was related to for offenders who received a prison sentence in 2016. Of the 12,619 offenders who received probation in 2016, 5,014 (40%) had a CSP.

Of the 4,308 offenders who received a prison sentence in 2016, 2,526 (59%) had a CSP in their criminal history. It was determined that thirty percent of those with a CSP (752) were on custody for an offense that would result in a CSP weight of (0.5). MSGC staff found that, of those 752 offenders, 432 were on probation for a prior SL 1 or 2 conviction, 312 were on probation for a prior misdemeanor or gross misdemeanor, and 8 were on probation for a statutory stay of adjudication for a drug offense under Minn. Stat. § 152.18. Staff could determine that the custody point was for a stay of adjudication only if that was noted on the worksheet. There were 111 cases where the source of the custody point was not determined, thus it is possible that custody points for stay of adjudications were undercounted.

Reducing the CSP to 0.5 for the 752 offenders identified would have the following results: 107 offenders (0.6% of all offenders, 2.5% of prison cases) would shift from a prison sentence to a probation sentence and 256 offenders (1.5% of all offenders, 5.9% of prison cases) would serve less time in prison. The total bed reduction is estimated to be 207. There is not much variation in the impact by race. See Table 7.

Appendix 8. Proposal to Increase CHS for Repeat Severe Violent Offenders

Of the 85 offenders sentenced for a severe violent crime in 2016 who had a prior severe violent offense, 73 received a prison sentence. Of the 73 offenders with prison sentences, 47 (64%) would serve a longer sentence under the proposed change to CHS calculations. The total estimated impact is an eventual 52 beds over time. For twenty-six offenders, application of the proposed increase in weights for prior offenses would not result in a longer prison sentence (10 because they received consecutive sentences and 16 with criminal history scores of six or more). Table 8 displays the number of offenders whose sentence would change and the projected prison bed impact. Also displayed is the average increase in sentence in months.

Table 8. Estimated Impact of Proposal for Repeat Severe Violent Offenders, by Current Offense

Statute	Offense Description	2016 Cases				
		Number w/ Prior SVC	No Changes to Prison Sentence	Serve More Time	Prison Beds	Average Sentence Increase (months)
609.19, subd. 1	Murder 2 – Intentional (Severity 11)	11	5 (46%)	6 (55%)	8	24
609.19, subd. 2	Murder 2 – Unintentional (Severity 10)	2	1 (50%)	1 (50%)	1.5	30

Statute	Offense Description	2016 Cases				
		Number w/ Prior SVC	No Changes to Prison Sentence	Serve More Time	Prison Beds	Average Sentence Increase (months)
609.221	Assault 1 – great bodily harm/peace officer	8	4 (50%)	4 (50%)	3.5	16
609.222, subd. 2	Assault 2 – dangerous weapon and SBH	3	0 (0%)	3 (100%)	1.3	8
609.245, subd. 1	Aggravated Robbery	41	12 (29%)	29 (71%)	32	20
609.25, subd. 2(2)	Kidnapping – unsafe release/under 16/GBH	2	1 (50%)	1 (50%)	1.4	24
609.342	First-Degree Criminal Sexual Conduct	4	2 (50%)	2 (50%)	3	28.5
609.66, subd. 1e(b)	Drive-By Shooting – person, occupied entity	2	1 (50%)	1 (50%)	0.5	12
Total		73	26 (36%)	47 (64%)	52	19.8

Table 9 displays the demographic prison-bed impact for this proposal. The projection is compared to the prison beds required under the current criminal history policy.

Table 9. Estimated Impact of Proposal for Repeat Severe Violent Offenders, by Gender, Race, and Judicial District

		Number of Offenders	Prison Bed Impact			
			Prison Beds Current Policy		Projected Bed Increase	
			Number	Percent	Number	Percent
	Male	72	601	99%	52	100%
	Female	1	10	1%	0	0%
Race & Ethnicity	White	14	128	21%	11	22%
	Black	49	394	65%	38	72%
	American Indian	5	62	10%	1	2%
	Hispanic	5	26	4%	2	4%
	Asian	0	0	0%	0	0%
Judicial District	First	2	19	3%	0.5	1%
	Second	7	68	11%	7	13%
	Third	4	40	7%	3	6%
	Fourth	36	225	37%	32	62%
	Fifth	3	30	5%	2	4%
	Sixth	1	20	3%	0	0%
	Seventh	5	50	8%	0.5	1%
	Eighth	1	3	1%	1	2%

		Number of Offenders	Prison Bed Impact			
			Prison Beds Current Policy		Projected Bed Increase	
			Number	Percent	Number	Percent
	Ninth	5	47	8%	3	6%
	Tenth	9	108	18%	2.5	4%
	Total	73	611	100%	52	100%

Notes on Estimating Impact: In applying the policy, the following rules were employed: the offender was assigned a new sentence at the higher criminal history score that reflected the sentence received. (If an offender received the high end of the range or low end of the range, he or she was assigned the top or bottom of the range at the higher CHS; for sentences within the range, an offender was assigned a new sentence that was same number of months away from the top or bottom of the range; if the sentence was a durational departure, the offender was assigned a new sentence with the same number of months above or below the range.) If an offender received a consecutive sentence, the sentence was not changed.

Appendix 9. Start Decay Period upon Sentence to Probation

Table 10. Estimated Impact of Starting Decay Period upon Sentence to Probation, by Gender, Race and Judicial District

		Number in Sample	Prison Beds in Sample, Under Current Policy	Prison Bed Impact within Sample								
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change
				No.	Percent	Beds (-)	Number	Percent	Beds (-)			
Race & Ethnicity	Male	1,209	2,945	14	1.2%	21	33	2.7%	13	34	2,911	-1.2%
	Female	113	203	1	0.9%	0.5	1	0.9%	0.5	1	202	-0.5%
	White	654	1,487	10	1.5%	15	17	2.6%	5	20	1,467	-1.3%
	Black	408	1,054	2	0.5%	3	7	1.7%	5.5	8.5	1,046	-0.8%
	American Indian	145	341	2	1.4%	2	8	5.5%	2	4	337	-1.2%
	Hispanic	74	177	1	1.4%	1	0	0.0%	0	1	176	-0.6%
	Asian	41	90	0	0%	0	2	4.9%	1	1	89	-1.1%
	Other/ unknown	0	0	0	0.0%	0	0	0.0%	0	0	0	---
Judicial District	First	129	230	1	0.8%	4	1	0.8%	0.5	5	225	-2.2%
	Second	155	297	2	1.3%	3	1	0.6%	0.2	3	294	-1.0%
	Third	98	253	0	0.0%	0	2	2.0%	0.5	0.5	253	-0.2%
	Fourth	303	767	3	1.0%	3.5	10	3.3%	3.5	7	760	-0.9%
	Fifth	68	186	0	0.0%	0	0	0.0%	0	0	186	-0.0%
	Sixth	58	149	1	1.7%	1	1	1.7%	0.3	1.3	148	-0.9%
	Seventh	155	343	3	1.9%	4	8	5.2%	2	6	337	-1.7%
	Eighth	44	134	1	2.3%	1	0	0.0%	0	1	133	-0.7%
	Ninth	132	351	2	1.5%	2	3	2.3%	1	3	348	-0.9%
	Tenth	180	437	2	1.1%	2	8	4.4%	6	8	429	-1.8%
	Total	1,322	3,149	15	1.1%	21.5	34	2.6%	13.5	35	3,114	-1.1%

Notes on Estimating Impact: Estimating the impact of this proposal requires determining the type of sentence (prison or probation) that the offender received for each of their prior offenses. In order to do this, MSGC staff selected a random sample of 35 percent of offenders who were sentenced to prison in 2016 who had prior felony offenses on his or her worksheet.¹⁴

Under this option, decay would start at date of sentence (DOS) rather than date of discharge (DOD) if the person received probation. Of the 2,657 prior offenses that received a probation sentence, it was determined that 191 (7%) would have decayed before sentencing under this proposal (which translates into 3% of all prior offenses).

Out of the 1,332 offenders in the sample, 110 (8%) would have a lower criminal history score under the proposal. However, the lower scores would result in a lower presumptive sentence for only 49 people because the loss of 0.5 points did not always result in the loss of a criminal history point, and for offenders with scores greater than 6.0 points, the loss of some history point(s) did not always result in a change to the presumptive duration.

Table 10 displays the impact of the proposal for the 1,332 offenders in the sample. Fifteen offenders (1% of sample) would shift from prison to probation and 34 offenders (3% of sample) would serve less time. Since the sample is 35 percent of offenders sentenced to prison who had at least one prior felony offense, it is estimated that the 35-prison bed reduction would translate into a reduction of 100 prison beds for the population of offenders sentenced to prison in 2016.¹⁵

¹⁴ 1,332 offenders in the prison sample with 6,043 prior felony offenses in their CHS. Of those priors, 45% received prison sentences; 44% received probation; and 11% had an “unknown” disposition (primarily because it was from a jurisdiction other than Minnesota).

¹⁵ MSGC staff expanded the data collection effort to include a probation sample of 20 percent of probation cases. 7,088 offenders in the probation sample with 3,770 prior felony offenses in their CHS. Of those priors, 20% received prison sentences; 69% received probation; and 11% had an “unknown” disposition (primarily because it was from a jurisdiction other than Minnesota). Of the 2,618 prior offenses that received a probation sentence, it was determined that 148 (6%) would have decayed before sentencing under this proposal (which translates into 4% of all prior offenses).

Appendix 10. Reduce Decay Period

Table 11. Estimated Impact of Shortening Decay Period to 10 Years for Felonies, by Gender, Race and Judicial District

		Shift to Presump- tive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	2.4%	27%	190	1.4%	255	241	1.8%	122	377	9,978	-3.6%	454
	Female	0.6%	12.5%	10	0.3%	11	12	0.4%	4	15	789	-1.9%	35
Race & Ethnicity	White	1.6%	21%	94	1.0%	128	108	1.1%	49	177	5,064	-3.4%	135
	Black	3.2%	29.5%	74	1.8%	95	89	2.1%	50	145	3,694	-3.8%	1,401
	American Indian	2.4%	25%	22	1.5%	30	36	2.4%	16	46	831	-5.2%	1,200
	Hispanic	1.3%	31%	9	1.0%	12	12	1.3%	6	18	910	-1.9%	470
	Asian	0.8%	23%	1	0.2%	1	8	1.5%	3	4	270	-1.5%	122
	Other/ unknown	0%	0%	0	0.0%	0	0	0.0%	0	0	0	---	---
Judicial District	First	1.6%	19%	19	0.9%	26	23	1.0%	9	35	1,010	-3.3%	163
	Second	2.5%	27%	24	1.3%	31	35	2.0%	15	46	1,233	-3.6%	284
	Third	1.4%	24%	13	1.0%	19	16	1.2%	7	26	864	-2.9%	225
	Fourth	2.6%	27.5%	51	1.5%	64	46	1.4%	30	94	2,646	-3.4%	264
	Fifth	0.8%	21%	5	0.5%	7	23	2.1%	10	17	546	-3.0%	234
	Sixth	2.1%	21%	9	1.0%	15	9	1.0%	6	21	528	-3.8%	250
	Seventh	2.2%	28%	28	1.7%	35	29	1.7%	11	46	1,124	-3.9%	288
	Eighth	2.1%	28.5%	6	1.4%	8	9	2.1%	6	14	346	-3.9%	267
	Ninth	2.3%	24.5%	21	1.2%	32	26	1.5%	14	46	1,055	-4.2%	385
	Tenth	1.7%	22%	24	1.0%	29	37	1.5%	17	46	1,416	-3.1%	185
	Total	2.0%	24%	200	1.2%	266	253	1.5%	125	391	10,768	-3.5%	242

Notes on Estimating Impact: MSGC staff calculated which prior felonies would decay if the decay period for felonies was changed from 15 years to 10 years. In total, 12 percent of the prior felony convictions from offenders sentenced in 2016 would have decayed if the decay period was changed. The impact of changing the GM/M decay period from 10 years to five years was not estimated. A new criminal history score was calculated for offenders sentenced in 2016.

Table 11 displays the number of offenders who shift from prison sentences to probation sentences, the number of prison cases for which a lower CHS would result in lower prison durations, and the prison bed impact if this change were applied to cases sentenced in 2016. (The policy was not applied to presumptive stayed cases that received a prison sentence i.e., aggravated dispositional departures because many of those cases are requests for prison.) Of the estimated impact of 391 beds, 266 beds are due to persons shifting from prison to probation and 125 are due to persons with prison sentences serving a shorter duration. The impact appears to be slightly greater for non-white than white offenders, both in shifts from prison to probation and offenders serving less time in prison.

Appendix 11. Eliminating the Misdemeanor Point

Table 12. Estimated Impact of Eliminating the Misd./Gross Misd. Point, by Gender, Race and Judicial District

		Shift to Presump-tive Stay	New Prison	Prison Bed Impact									
				Shift from Prison to Probation			Serve Less Time in Prison			Total Beds (-)	Estimated Resulting Prison Beds	Percent Change	Est. Prison Beds per 100,000
				Number	Percent	Beds (-)	Number	Percent	Beds (-)				
	Male	1.2%	28%	83	0.6%	94	175	1.3%	54	148	10,207	-1.4%	464
	Female	0.6%	12%	13	0.4%	15	8	0.2%	2	17	787	-2.1%	35
Race & Ethnicity	White	1.1%	22%	59	0.6%	69	89	0.9%	23	92	5,149	-1.8%	137
	Black	1.1%	31%	20	0.5%	21	56	1.3%	15	37	3,802	-1.0%	1,442
	American Indian	1.6%	26%	14	1.0%	14	24	1.6%	12	26	851	-3.0%	1,229
	Hispanic	0.3%	31%	2	0.2%	2	10	1.1%	4	6	922	-0.6%	477
	Asian	0.6%	23%	1	0.2%	2.5	4	0.8%	1	3	271	-1.1%	122
	Other/unknown	0.0%	0%	0	0.0%	0	0	0.0%		0	0	---	---
Judicial District	First	1.3%	19.5%	15	0.7%	18	14	0.6%	3	21	1,024	-2.0%	165
	Second	0.7%	28%	7	0.4%	7	17	1.0%	4	11	1,268	-0.9%	292
	Third	1.0%	24%	6	0.4%	6	20	1.5%	6	12	878	-1.3%	228
	Fourth	0.5%	29%	9	0.3%	9	30	0.9%	10	19	2,721	-0.7%	271
	Fifth	1.1%	21%	4	0.4%	5	11	1.0%	4	8	555	-1.4%	238
	Sixth	1.3%	21%	3	0.3%	4	10	1.2%	3	7	542	-1.3%	257
	Seventh	1.6%	28%	16	0.9%	19	29	1.7%	6	25	1,145	-2.1%	293
	Eighth	0.9%	29%	3	0.7%	3	4	0.9%	2	5	355	-1.4%	274
	Ninth	1.7%	25%	19	1.1%	22	25	1.5%	12	34	1,067	-3.1%	389
	Tenth	1.1%	22%	14	0.6%	17	23	0.9%	6	23	1,439	-1.6%	188
	Total	1.1%	25%	96	0.6%	109	183	1.1%	56	165	10,994	-1.5%	247

Appendix 12. Summary of CHS Data Review Sessions

The MSGC has studied the components of the CHS for over two years, focusing on trends.

Appendix 12.1. MSGC Staff Review Sessions

MSGC staff reported the following trends to the Commission:

- Criminal history scores have been on the rise: The average CHS in 1990 was 1.4; by 2013, it was up to 2.4.
- CHS of zero has dropped: In 1991, 51 percent had a CHS of 0; by 2013, that number had fallen to 31 percent.
- CHS has a significant role in determining who is recommended prison (“presumptive prison”): from 2010 to 2014, 55 percent of presumptive prison sentences were due to CHS; 25 percent were due to the seriousness of the severity-level ranking (i.e., the SL of the offense is ranked above the “presumptive prison” disposition line); and 20 percent were due to mandatory minimums.
- Across racial groups, from 2010-2014, 17 percent of white offenders had a presumptive prison sentence due to CHS versus 24 percent of black offenders and 20 percent of American Indian offenders.

One particular component of CHS that the MSGC has discussed has been the custody status point (CSP). MSGC staff reported the following:

- The CSP has grown over time. In 1991, 27 percent of offenders had a CSP; by 2013, that number had grown to 44 percent.
- The CSP is the second-largest component of the CHS, after felony points.
- The CSP generally causes a prior offense to count twice in the CHS: once in the felony or misdemeanor point, and once in the CSP.
- When the prior offense is of lesser severity, the offense’s custody status may contribute more to CHS than the felony or misdemeanor point for prior offense itself.
- In 2013, 42 percent of white offenders, 46 percent of black offenders, and 48 percent of American Indian offenders had a CSP.
- For probationers, custody status is deemed to continue throughout the entire duration of probation, as originally pronounced. Because pronounced probation durations vary widely from one geographical area to another (from an average of 40 months in the 4th Judicial District to 88 months in the 7th Judicial District), the incidence of CSPs is not geographically uniform.

- Probation terms can be longer than prison sentences for some offenses, so a probation sentence is commonly subject to a CSP for a longer period of time than a prison sentence for the same offense.

The MSGC also discussed the decay factor. MSGC staff reported the following:

- A decay policy may lessen the impact of criminal history, thereby focusing punishment on the current offense. A decay policy can also incentivize a crime-free existence.
- Half of all priors are five years old or less: A staff review of the age of prior felony offenses¹⁶ in 2015 found that 50 percent were five years old or less; another 25 percent were ten years old or less; and the remaining 25 percent were over ten years old.
- An offender who receives a probation sentence can wait longer for the offense to decay than an offender who receives a prison sentence for the same type of offense. (This remains true even though decay begins upon discharge from probation, rather than the end of the original term of probation.)
- As noted above, the probation periods may vary widely by jurisdiction, resulting in geographical differences in effective decay periods.

¹⁶ Time between date of sentence on prior and current offense date.

Appendix 12.2. Robina Recidivism Study on Minnesota's CHS

In addition to trends presented by its staff, Dr. Julia Laskorunsky, Research Fellow, Robina Institute of Criminal Law and Criminal Justice, gave two presentations to the MSGC in 2017 and 2018. Phases I and II of Robina's Recidivism Study on Minnesota's CHS concluded that:

- Minnesota's CHS predicted recidivism "moderately well," but it had components that did not add to its predictive value.¹⁷
- Some components of Minnesota's CHS increased the presumptive sentence length without adding to the score's predictive power for recidivism.¹⁸

Specifically, with respect to the custody status point and the misdemeanor point, Phase I of the study found that:

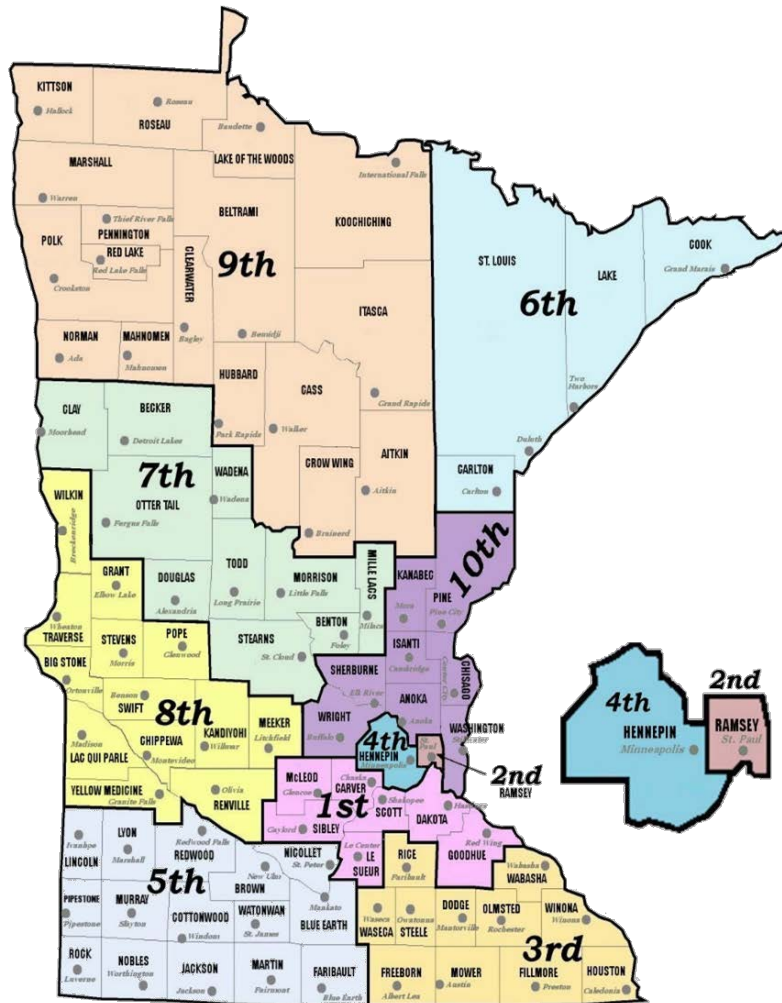
- If a new CHS were created without adding a point for custody status, 30 percent of offenders studied would move into a lower CH score category, and the power of the score to predict felony reconviction within three years of being placed on probation or released from incarceration would fall by one percent.
- If a new CHS were created without adding a point for misdemeanors, seven percent of offenders studied would move into a lower CH score category, and the predictive power of the score would fall by 1 percent.¹⁸

¹⁷ Laskorunsky, Julia. *The Predictive Validity of the Minnesota Sentencing Guideline's Criminal History Score*. Robina Institute of Criminal Law and Criminal Justice University of Minnesota. Presentation to Minn. Sentencing Guidelines Comm'n, Dec. 14, 2017.

¹⁸ Laskorunsky, Julia. *The Predictive Validity of the Minnesota Sentencing Guideline's Criminal History Score, Phase II*. Robina Institute of Criminal Law and Criminal Justice University of Minnesota. Presentation to Minn. Sentencing Guidelines Comm'n, May 10, 2018.

Appendix 13. References

Appendix 13.1. Minnesota Judicial District Map



<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>	<u>Fifth</u>	<u>Sixth</u>	<u>Seventh</u>	<u>Eighth</u>	<u>Ninth</u>	<u>Tenth</u>
Carver	Ramsey	Dodge	Hennepin	Blue Earth	Carlton	Becker	Big Stone	Aitkin	Anoka
Dakota		Fillmore		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue		Freeborn		Cottonwood	Lake	Clay	Grant	Cass	Isanti
Le Sueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Mille Lacs	Lac qui Parle	Crow Wing	Pine
Scott		Olmsted		Lincoln		Morrison	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Otter Tail	Pope	Itasca	Washington
		Steele		Martin		Stearns	Renville	Kittson	Wright
		Wabasha		Murray		Todd	Stevens	Koochiching	
		Waseca		Nicollet		Wadena	Swift	Lake of the Woods	
		Winona		Nobles			Traverse	Mahnomen	
				Pipestone			Wilkin	Marshall	
				Redwood			Yellow Medicine	Norman	
				Rock				Pennington	
				Watonwan				Polk	
								Red Lake	
								Roseau	

Source: Minn. Judicial Branch.

Appendix 13.2. Standard Sentencing Guidelines Grid – Effective August 1, 2018

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-shootings</i>)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480</i> ²	426 <i>363-480</i> ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (<i>unintentional murder</i>)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Agg. Robbery, 1st Degree</i> <i>Burglary, 1st Degree (w/</i> <i>Weapon or Assault)</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i> <i>Financial Exploitation of a</i> <i>Vulnerable Adult</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i> ^{2, 3}
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied</i> <i>Dwelling)</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

³ The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

Appendix 13.3. Sex Offender Grid – Effective August 1, 2018

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or more
CSC 1st Degree	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
CSC 2nd Degree–(c)(d)(e)(f)(h) Prostitution; Sex Trafficking ³ 1st Degree–1(a)	B	90 <i>90</i> ³ –108	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
CSC 3rd Degree–(c)(d)(g)(h)(i)(j) (k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2nd Degree–1a	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180</i> ²
CSC 2nd Degree–(a)(b)(g) CSC 3rd Degree–(a)(e)(f) or (b) with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
CSC 4th Degree–(c)(d)(g)(h)(i)(j) (k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
CSC 4th Degree–(a)(b)(e)(f) CSC 5th Degree Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
CSC 3rd Degree–(b) with subd. 2(2) Indecent Exposure Possession of Child Pornography Solicit Child for Sexual Conduct ²	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
Registration Of Predatory Offenders	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

³ Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)

Appendix 13.4. Drug Offender Grid – Effective August 1, 2018

Presumptive sentence lengths are in months. Italicized numbers within the grid denotes range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subjected to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Aggravated Controlled Substance Crime, 1st Degree Manufacture of Any Amt. Meth</i>	D9	86 <i>74*-103</i>	98 <i>84*-117</i>	110 <i>94*-132</i>	122 <i>104*-146</i>	134 <i>114*-160</i>	146 <i>125*-175</i>	158 <i>135*-189</i>
<i>Controlled Substance Crime, 1st Degree</i>	D8	65 <i>56*-78</i>	75 <i>64*-90</i>	85 <i>73*-102</i>	95 <i>81*-114</i>	105 <i>90*-126</i>	115 <i>98*-138</i>	125 <i>107*-150</i>
<i>Controlled Substance Crime, 2nd Degree</i>	D7	48	58	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Controlled Substance Crime, 3rd Degree Failure to Affix Stamp</i>	D6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Possess Substances with Intent to Manufacture Meth</i>	D5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Controlled Substance Crime, 4th Degree</i>	D4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	D3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Controlled Substance Crime, 5th Degree</i>	D2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	D1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.